



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Electric Service Corp.

File: B-228387

Date: December 11, 1987

DIGEST

1. A bid that included suggestions as to possible alternative methods of accomplishing the results desired by the agency did not take exception to any solicitation requirements, and thus improperly was rejected as nonresponsive.

2. Where a bid protest is sustained based on agency's improper rejection of the protester's bid, and the contract in issue already has been performed, the protester is entitled to reimbursement of its bid preparation costs and costs of pursuing the protest, including attorneys' fees.

DECISION

Electric Service Corp. protests the rejection of its bid as nonresponsive by the Veterans Administration (VA) under invitation for bids (IFB) No. 455-81-87. The solicitation sought bids for cleaning, disinfecting, and chlorinating an underground water reservoir at a VA medical center in Puerto Rico. The VA determined Electric's bid to be nonresponsive because, in the agency's view, the firm had qualified its bid by proposing an alternate method of performing the work that was not in compliance with the IFB's specifications. In its administrative report on the protest, however, VA takes the position that it improperly rejected the bid. We agree that Electric's bid was responsive, and sustain the protest.

The IFB's specifications required that the interior surfaces of the reservoir be scrubbed with fiber floor scrub brushes or other approved tank cleaning brushes. Electric submitted a bid to perform the work for \$2,000. The bid also included suggestions that the VA should remove debris from a manhole over the reservoir before beginning work in the reservoir itself and that, "if authorized by the government," the cleaning could be done more rapidly and efficiently with a water pressure machine than with brushes. Although Electric's was the low bid, the VA rejected it on the


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grounds that the suggestions in the bid constituted conditions that modified the requirements of the solicitation, and therefore rendered the bid nonresponsive. Award was made to the second low bidder at a price of \$5,600.

Where a firm's bid does not take exception to any of the material requirements of the solicitation, acceptance of the firm's bid obligates it to perform in accordance with the specifications. See Gemma Construction Co., Inc., B-219733, Nov. 21, 1985, 85-2 CPD ¶ 584, aff'd, Nasuf Construction Corp.--Reconsideration, B-219733.2, Mar. 19, 1986, 86-1 CPD ¶ 263. The position the VA takes in its report here is the correct one. There is nothing in Electric's bid that reasonably may be construed as an attempt to avoid any of the terms of the solicitation; the firm's suggestions as to alternative procedures clearly were only advisory.

Although the VA determined that Electric's bid was responsive, it nevertheless permitted the awardee to continue performance,^{1/} and performance of the contract now has been completed. Although we can make no meaningful recommendation concerning the award, we find that Electric is entitled to recover its bid preparation costs and the costs of pursuing its protest, including attorneys' fees; Electric has demonstrated that but for the improper action on the part of the VA it would have received the award. See Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1987); Morton Management, Inc., B-224031, Jan. 8, 1987, 87-1 CPD ¶ 32. By separate letter, therefore, we are advising the Administrator of our finding that Electric is entitled to be reimbursed for its bid preparation costs and the costs of pursuing the protest, including attorneys' fees. Electric should submit to the VA the documentation required to establish the amount to which it is entitled.

The protest is sustained.

for 
Comptroller General
of the United States

^{1/} The agency was not required to suspend performance under the provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (Supp. III 1985), since Electric's protest was not filed within 10 days after the award.